

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SPENCER MITCHELL,)
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Movant,)
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vs.) Case No. 4:09CV00962 ERW
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UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter comes before the Court on Movant Spencer Mitchell's ("Movant") Motion for Extension of Time [doc. #18].

Movant seeks an extension of time to file a "response" to the Court's Memorandum and Order dated June 28, 2010 [doc. #16], denying Movant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. That Memorandum and Order represents the Court's final decision in this matter, and Movant's remedy at this point is to appeal. The Court will therefore construe Movant's Motion as one for additional time to file a notice of appeal. Movant's deadline for filing a notice of appeal was originally August 27, 2010, and the Court will extend that deadline to September 17, 2010 pursuant to Fed. R. App. P. 4(a)(5)(A)(i).

In his Motion, Movant also requests a copy of the transcript from the evidentiary hearing held on his § 2255 Motion on June 11, 2010. Under 28 U.S.C. § 753(f), fees for transcripts may be paid by the United States in certain instances:

Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes. Fees for transcripts furnished in

proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purposes if the trial judge . . . certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

28 U.S.C. § 753(f). The Court finds that Movant meets the criteria to receive a free transcript in this § 2255 proceeding. Once the transcript of the evidentiary hearing has been completed, the Clerk of Court shall prepare and send a free copy of the transcript to Movant, with the expense to be borne by the United States.

Accordingly,

IT IS HEREBY ORDERED that Movant's Motion for Extension of Time [doc. #18] is **GRANTED, in part** and **DENIED, in part**. Movant shall file a notice of appeal, if any, with this Court no later than **September 17, 2010**.

IT IS FURTHER ORDERED that the Clerk of Court shall send a free copy of the transcript of the June 11, 2010 evidentiary hearing to Movant when the transcript becomes available.

Dated this 29th Day of July, 2010.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE